CATHOLIC CHARITIES,
San Francisco, CA, July 22, 1998.

Hon. TRENT LOTT,
U.S. Senate Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR LOTT: Please accept this letter in my capacity as the Chief Executive Officer of Catholic Charities of the Archdiocese of San Francisco and the immediate past President of Catholic Charities of California. It has been alleged that James Hormel, President Clinton's nominee to be Ambassador to Luxembourg, is anti-Catholic and anti-religious. I know the characterizations of Mr. Hormel are not true. I know personally that Mr. Hormel vigorously opposes discrimination in all forms including that of religion.

I urge you to allow Mr. Hormel's nomination to come before the full Senate for he would be an excellent representative for the United States to the predominantly Catholic country of Luxembourg.

Sincerely,

FRANK C. HUDSON,
Chief Executive Officer.

ALASKA NATIVE CLAIMS SETTLEMENT ACT AMENDMENTS

Mr. MURKOWSKI. I rise to speak in support of the passage of H.R. 2000, a bill to amend the Alaska Native Claims Settlement Act to make certain clarifications to the land bank protection provisions, and for other purposes, and I hope it will be sent on its way to the President for his signature.

A measure similar to H.R. 2000 was passed by the Senate Energy and Natural Resources Committee on September 24, of last year. S. 967 contained the majority of the provisions in H.R. 2000.

One of the most important provisions in H.R. 2000 is section 6 which implements a land exchange with the Calista Corporation, an Alaska Native regional corporation organized under the authority of the Alaska Native Claims Settlement Act. This exchange, originally authorized in 1991, by P.L. 102–172, would provide for the United States to acquire more than 200,000 acres of Calista and village corporation lands and interests in lands within the Yukon Delta National Wildlife Refuge in southwestern Alaska.

The Refuge serves as an important habitat and as a breeding and nesting ground for a variety of fish and wildlife, including numerous species of migratory birds and waterfowl. As a result, the Calista exchange will enhance the conservation and protection of these vital habitats and thereby further the purpose of ANCSA and the Alaska National Interest Lands Conservation Act.

In addition to conservation benefits, this exchange will also render much needed economic benefit to the Yupik Eskimo people of southwestern Alaska. The Calista region is burdened by some of the harshest economic and social conditions in the Nation. As a result of this exchange, the Calista Corporation will be better able to make the kind of investments that will improve the region's economy and the lives of the Yupik people. In this regard, this provision furthers and carries out the underlying purposes of ANCSA.

This provision is, in part, the result of discussions by the various interested parties. As a result of those discussions, a number of modifications were made to the original package of lands offered for exchange.

Mr. President, it is past time to move forward with this exchange.

Another section of this bill I wanted to comment on is a provision that was not included in the technical amendments I introduced but that was added in the House.

Section 12 of this bill expressly authorizes and confirms the original intent of ANCSA in 1971: that ANCSA corporations could provide health, education and welfare benefits for Alaska Natives, including those persons who were their shareholders.

This provision is necessary because one recent Alaska Supreme Court case has concluded that an ANCSA corporation had liability to its shareholders under Alaska state law for a cash payment benefits program. The program at issue in that case was limited to the persons reached a certain age. Given the narrowness of this program, it was not consistent with the intent of ANCSA. Section 12 of this bill is not intended to alter the result in that case, or otherwise, with regard to that specific benefit program.

However, in reaching its decision under Alaska state law, the court used language which suggests that any ANCSA corporate benefits program which does not provide equal pro rata benefits to all shareholders simultaneously is invalid. Such a conclusion goes too far and is inconsistent with the intent behind ANCSA.

Thus, section 12 of this bill is intended to make clear that in evaluating the legality of health, education and welfare programs maintained by ANCSA corporations, federal law (ANCSA) is to preempt Alaska state law. Such programs have been established in good faith to provide health, education and/or welfare benefits for the ANCSA corporations' shareholders or their family members.

To be valid under ANCSA, it is not necessary that benefits be provided on an equal pro rata basis simultaneously to all shareholders, or even that the program recipients be shareholders as long as they are family members of shareholders.

Examples of the type of programs authorized include: scholarships, cultural activities, shareholder employment opportunities and related financial assistance, funeral benefits, meals for the elderly and other elders benefits including cash payments, and medical programs.

I believe these programs represent an important part of the ANCSA corporations, and I hope they will continue long into the future.

REVISION OF RECORD CONCERNING AMENDMENT NO. 3812

Mr. HATCH. Mr. President, prior to the passage of H.R. 3494 by the Senate and House, Title 18 of the United States Code, Section 2252 and 2252A permitted prosecution for possession of child pornography only when it could be alleged that an individual possessed three or more pictures or images of child pornography. When the original Senate substitute to H.R. 3494 was reported out of the Judiciary Committee, no agreement had been reached on amending the federal child pornography laws to prohibit the possession of even one picture or image of child pornography.

Thanks to the diligent efforts of Senators LEAHY, DEWINE, and SESSIONS, we were able to reach agreement on that issue. The final bill makes it clear that the United States has ''Zero Tolerance'' for the possession of any child pornography. Unfortunately, Senators LEAHY, DEWINE, and SESSIONS were inadvertently omitted from the list of cosponsors of Senate amendment 3812 to H.R. 3494, which incorporated that agreement. The RECORD should be corrected to reflect their work on, and cosponsorship of, this important amendment.

MISPRINT OF THE STATEMENT OF MANAGERS OF S. 1260

Mr. SARBANES. Mr. President, I rise to address a question to the chairman of the Banking Committee, Senator D'AMATO: it is my understanding that the joint explanatory statement of the committee of conference on S. 1260, as printed by the Government Printing Office in Report 105–803, and as it appeared in the CONGRESSIONAL RECORD for Friday, October 9, 1998, contained an error and was incomplete. Is that the Senator's understanding?

Mr. D'AMATO. Yes, my colleague from Maryland, the ranking Democrat on the Banking Committee is correct. Due to a clerical error, the joint explanatory statement of the committee of conference on S. 1260, was printed without the final page. This page contained some essential explanatory information regarding the 1995 Securities Litigation Reform Act regarding scienter standards. Unfortunately, this same clerical error occurred in the version of the report language that appeared in the House RECORD at H10270. The official version of the joint explanatory statement was filed in the Senate on October 9th and did contain the page that was omitted by the GPO and the CONGRESSIONAL RECORD for October 9th.

In order to clarify this situation, I ask for unanimous consent that the text of the explanatory statement be reprinted in its entirety.

Mr. SARBANES. Is it the further understanding of the Chairman of the Banking Committee that page H10775 of the CONGRESSIONAL RECORD for October 13, 1998 contains a printing error?

Mr. D'AMATO. The Senator from Maryland is correct. The Joint Explanatory Statement of the committee of conference begins on page H10774 of the

CONGRESSIONAL RECORD for October 13, 1998 and concludes on page H10775 where the names of the House and Senate Managers appear. The material on page H10775 that follows the names of the Managers, although printed in the same typeface, is not part of the Joint Explanatory Statement. It does not represent the views of the Managers.

Mr. SARBANES. So the correct version of the Joint Explanatory Statement is that which will appear in today's Senate RECORD?

Mr. D'AMATO. The Senator is correct.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

THE SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

UNIFORM STANDARDS

Title I of S. 1260, the Securities Litigation Uniform Standards Act of 1998, makes Federal court the exclusive venue for most securities class action lawsuits. The purpose of this title is to prevent plaintiffs from seeking to evade the protections that Federal law provides against abusive litigation by filing suit in State, rather than in Federal, court. The legislation is designed to protect the interests of shareholders and employees of public companies that are the target of meritless ''strike'' suits. The purpose of these strike suits is to extract a sizeable settlement from companies that are forced to settle, regardless of the lack of merits of the suit, simply to avoid the potentially bankrupting expense of litigating.

Additionally, consistent with the determination that Congress made in the National Securities Markets Improvement Act[1] (NSMIA), this legislation establishes uniform national rules for securities class action litigation involving our national capital markets. Under the legislation, class actions relating to a ''covered security'' (as defined by section 18(b) of the Securities Act of 1933, which was added to that Act by NSMIA) alleging fraud or manipulation must be maintained pursuant to the provisions of Federal securities law, in Federal court (subject to certain exceptions).

''Class actions'' that the legislation bars from State court include actions brought on behalf of more than 50 persons, actions brought on behalf of one or more unnamed parties, and so-called ''mass actions,'' in which a group of lawsuits filed in the same court are joined or otherwise proceed as a single action.

The legislation provides for certain exceptions for specific types of actions. The legislation preserves State jurisdiction over: (1) certain actions that are based upon the law of the State in which the issuer of the security in question is incorporated[2]; (2) actions brought by States and political subdivisions, and State pension plans, so long as the plaintiffs are named and have authorized participation in the action; and (3) actions by a party to a contractual agreement (such as an indenture trustee) seeking to enforce provisions of the indenture.

Additionally, the legislation provides for an exception from the definition of ''class action'' for certain shareholder derivative actions.

Title II of the legislation reauthorizes the Securities and Exchange Commission (SEC or Commission) for Fiscal Year 1999. This title also includes authority for the SEC to pay economists above the general services scale.

Title III of the legislation provides for corrections to certain clerical and technical errors in the Federal securities laws arising from changes made by the Private Securities Litigation Reform Act of 1995[3] (the ''Reform Act'') and NSMIA.

The managers note that a report and statistical analysis of securities class actions lawsuits authored by Joseph A. Grundfest and Michael A. Perino reached the following conclusion:

The evidence presented in this report suggests that the level of class action securities fraud litigation has declined by about a third in federal courts, but that there has been an almost equal increase in the level of state court activity, largely as a result of a ''substition effect'' whereby plaintiffs resort to state court to avoid the new, more stringent requirements of federal cases. There has also been an increase in parallel litigation between state and federal courts in an apparent effort to avoid the federal discovery stay or other provisions of the Act. This increase in state activity has the potential not only to undermine the intent of the Act, but to increase the overall cost of litigation to the extent that the Act encourages the filing of parallel claims.[4]

Prior to the passage of the Reform Act, there was essentially no significant securities class action litigation brought in State court.[5] In its Report to the President and the Congress on the First Year of Practice Under the Private Securities Litigation Reform Act of 1995, the SEC called the shift of securities fraud cases from Federal to State court ''potentially the most significant development in securities litigation'' since passage of the Reform Act.[6]

The managers also determined that, since passage of the Reform Act, plaintiffs' lawyers have sought to circumvent the Act's provisions by exploiting differences between Federal and State laws by filing frivolous and speculative lawsuits in State court, where essentially none of the Reform Act's procedural or substantive protections against abusive suits are available.[7] In California, State securities class action filings in the first six months of 1996 went up roughly five-fold compared to the first six months of 1995, prior to passage of the Reform Act.[8] Furthermore, as a state securities commissioner has observed:

It is important to note that companies can not control where their securities are traded after an initial public offering. * * * As a result, companies with publicly-traded securities can not choose to avoid jurisdictions which present unreasonable litigation costs. Thus, a single state can impose the risks and costs of its peculiar litigation system on all national issuers.[9]

The solution to this problem is to make Federal court the exclusive venue for most securities fraud class action litigation involving nationally traded securities.

SCIENTER

It is the clear understanding of the managers that Congress did not, in adopting the Reform Act, intend to alter the standards of liability under the Exchange Act.

The managers understand, however, that certain Federal district courts have interpreted the Reform Act as having altered the scienter requirement. In that regard, the managers again emphasize that the clear intent in 1995 and our continuing intent in this legislation is that neither the Reform Act nor S. 1260 in any way alters the scienter standard in Federal securities fraud suits.

Additionally, it was the intent of Congress, as was expressly stated during the legislative debate on the Reform Act, and particularly during the debate on overriding the President's veto, that the Reform Act establish a heightened uniform Federal standard on pleading requirements based upon the pleading standard applied by the Second Circuit Court of Appeals. Indeed, the express language of the Reform Act itself carefully provides that plaintiffs must ''state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'' The Managers emphasize that neither the Reform Act nor S. 1260 makes any attempt to define that state of mind.

The managers note that in Ernst and Ernst v. Hochfelder,[10] the Supreme Court left open the question of whether conduct that was not intentional was sufficient for liability under the Federal securities laws. The Supreme Court has never answered that question. The Court expressly reserved the question of whether reckless behavior is sufficient for civil liability under section 10(b) and Rule 10b–5 in a subsequent case, Herman & Maclean v. Huddleston,[11] where it stated, ''We have explicitly left open the question of whether recklessness satisfies the scienter requirement.''

The managers note that since the passage of the Reform Act, a data base containing many of the complaints, responses and judicial decisions on securities class actions since enactment of the Reform Act has been established on the Internet. This data base, the Securities Class Action Clearinghouse, is an extremely useful source of information on securities class actions. It can be accessed on the world wide web at http://securities.stanford.edu. The managers urge other Federal courts to adopt rules, similar to those in effect in the Northern District of California, to facilitate maintenance of this and similar data bases.

TRIBUTE TO DANA TASCHNER

Mr. DASCHLE. Mr. President, I rise today to call attention to the outstanding achievements of a Nevadan who has dedicated himself to helping individuals who often lack the means to help themselves. Dana Taschner has achieved national recognition as a champion for victims of domestic violence and civil rights abuses. He is a 38 year-old lawyer from Reno who chooses cases that are relatively small-scale,

[1] Public Law 104–290 (October 11, 1996).

[2] It is the intention of the managers that the suits under this exception be limited to the state in which issuer of the security is incorporated, in the case of a corporation, or state of organization, in the case of any other entity.

[3] Public Law 104–67 (December 22, 1995).

[4] Grundfest, Joseph A. & Perino, Michael A., Securities Litigation Reform: The First Year's Experience: A Statistical and Legal Analysis of Class Action Securities Fraud Litigation under the Private Securities Litigation Reform Act of 1995, Stanford Law School (February 27, 1997).

[5] *Id.* n. 18.

[6] *Report to the President and the Congress on the First Year of Practice Under the Private Securities Litigation Reform Act of 1995,* U.S. Securities and Exchange Commission, Office of the General Counsel, April 1997 at 61.

[7] Testimony of Mr. Jack G. Levin before the Subcommittee on Finance and Hazardous Materials of the Committee on Commerce, House of Representatives, Serial No. 105–85, at 41–45 (May 19, 1998).

[8] *Id.* at 4.

[9] Written statement of Hon. Keith Paul Bishop, Commissioner, California Department of Corporations, submitted to the Senate Committee on Banking, Housing and Urban Affairs' Subcommittee on Securities'' ''Oversight Hearing on the Private Securities Litigation Reform Act of 1995,'' Serial No. 105–182, at 3 (July 27, 1998).

[10] 425 U.S. 185 (1976).

[11] 459 U.S. 375 (1983).